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SIPDIS

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TAGS: PGOV ECON EC

SUBJECT: ECUADOR: CONFLICTS EMERGE AS CONSTITUTION BEGINS  
TO TAKE SHAPE

REF: QUITO 409

Classified By: DCM Jefferson Brown for reason 1.4 (D)

**¶1.** (C) Summary: Recent polling data show negative approval ratings for the Constituent Assembly, which has only two more months to approve approximately 80 percent of the new constitution. The articles approved so far are heavy on principles and lofty ideals, while most of the tough decisions on the organization of government still lie ahead. The committees are debating articles that could give the government greater discretion over economic activity. One approved article prohibits new treaties that allow for international arbitration. President Correa was critical of his own Proud and Sovereign Fatherland (PAIS) bloc for not focusing sufficiently on his political priorities. PAIS Assembly members face the difficult test of speeding up the process without appearing to ride roughshod over other political parties with seats in the Assembly. (End summary)

THE MARATHON AHEAD

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**¶2.** (SBU) After six months of work, the Constituent Assembly has approved only 57 constitutional articles. The new constitution is expected to have 284 articles, so the Assembly has concluded only 20% of the job within its original six-month tenure. On May 20, the Assembly approved a two-month extension, giving it until July 26 to complete its work. The statute passed in the April 2007 referendum does not allow any further extension. Realizing the time crunch, the leadership has decided that the Assembly will now work full days on Fridays and on Saturdays until noon.

**¶3.** (SBU) The pace of constitutional text approval has increased from zero articles in the first four months and 17 in the fifth month to 40 in the sixth month. Most of the remaining portions of the constitution have been drafted by committees, with 108 articles having undergone the first of two required plenary debates and 37 ready for initial plenary consideration. In the meantime, the committees are still trying to reach consensuses on the remaining articles.

THE CHANGING ELECTORAL CALENDAR

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4 (SBU) Given the new deadline for a finished product, the Supreme Electoral Tribunal's original proposal of October 19 for elections is no longer feasible. PAIS Assembly member Virgilio Hernandez proposed that the referendum be held on September 14 and general elections on January 25. Others have suggested general election dates as late as March. The terms of current provincial and local officials would have to be extended until then. No final decision on election dates has been taken.

5 (SBU) Assembly President Alberto Acosta's proposal to fill the gap between the closure of the Assembly and the inauguration of a new congress is to install a 39-member legislative commission. This begs the question of what would happen if the new constitution fails to receive a majority of votes in the referendum. When asked about this issue during a May 21 television interview, President Correa responded that if Ecuadorians did not approve the new constitution, the suspended Congress would reassemble and he would finish his four year presidential term.

#### APPROVED TEXTS LARGELY PRINCIPLES

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16. (SBU) The Assembly approved Constitutional articles in the following areas during its sixth month (April 29 - May 28):

-- Treaties and international instruments. One approved article prohibits treaties that provide for international arbitration (the article appears to apply to new treaties rather than existing treaties, and does allow new treaties that meet certain restrictions). Other articles state that the President's adherence to international treaties will be ratified by the legislature, and that the government may choose to submit treaties for approval in popular referendums.

-- General principles of the development regime. Assembly members defined the development regime as the set of economic, political, socio-cultural and environmental systems that guarantee the realization of "sumak kawsay," the Kichwa

expression for good living. These articles include eclectic references to participation, territorial sovereignty, equality of gender, and the State's obligations to its citizens, among others.

-- Development planning. Planning will be organized through a "National De-centralized System of Participatory Planning", where representative bodies at different tiers of government and the citizenry will be called-upon to execute development plans.

-- Administration of justice. The judiciary will enjoy economic, administrative, and financial autonomy. There will be jurisdictional unity, trials will be public, and delays and negligence in the administration of justice will be punishable by law.

-- Labor rights. The constitutional text "guarantees" the fundamental right to decent employment. Forced labor is prohibited, as well as any type of discrimination in the work-place. The right of workers to strike and organize will be recognized.

-- Principles of international relations. International relations will be guided by certain principles, some of which are: promotion of peace, non-intervention, Latin American integration, condemnation of imperialism, respect for the human rights of migrants, and democratization of international organizations.

#### ECONOMIC PROVISIONS CONCERN PRIVATE SECTOR

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17. (C) Committees began to put forward in May some of the initial economic provisions of the constitution. While still subject to revisions by the committees and plenary, these articles appear to be supported by the PAIS majority and give an indication of what could be approved. Two provisions have been much discussed by the opposition Assembly members and media. One guarantees property rights, but then asserts that property needs to fulfill a social need. The other makes banking a "delegated public service." Commentators have noted that the first raises concerns of how social need will be defined and under what circumstances property could be expropriated, while the second implies that the government will have greater discretion in regulating the banking

sector. (Comment: These provisions, and others like them that might be forthcoming, raise uncertainty for the private sector, but much will depend on if and how they are implemented.)

#### DISTRACTIONS FROM THE CONSTITUTION

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¶18. (SBU) The Assembly continued to be distracted from work on the constitution by other matters. It approved three mandates during its sixth month of work on third party contracts (Reftel), state financed companies, and portability of cell phone numbers. It passed a resolution in support of sovereignty committee chair Maria Augusta Calle, responding to her investigation by the Colombian Prosecutor General for supporting the FARC. Many commentators and opposition Assembly members have noted that given the Assembly's tight schedule, such initiatives have wasted precious time. Proposals by individual PAIS Assembly members, such as reconsidering the national seal and anthem and ensuring women's right to sexual pleasure, were also subject to derision, although they did not move forward.

#### CORREA SEEKS PAIS DISCIPLINE

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¶19. (SBU) The President has been critical of the way in which the Assembly worked. During a May 21 television interview, he noted that the Assembly had been "too democratic" when it attempted to listen to everyone. Correa appeared unhappy over PAIS Assembly members pursuing their personal agendas and invited those who were ideologically closer to other political points of view to leave the PAIS bloc.

¶110. (SBU) The indigenous movement is among those whose support Correa is willing to forego, as he made clear in his May 10 radio address. Outraged by PAIS's decision not to endorse their initiative on plurinationality and previous consent of communities for mining, some indigenous groups called for an uprising against the government. Although the uprising did not transpire, they clearly remain at odds with Correa.

#### INCREASINGLY UNPOPULAR ASSEMBLY

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¶111. (SBU) Pollsters associated with different ideological positions reported in late May that the Assembly's confidence ratings had declined. According to Santiago Perez, the government's pollster, the percentage of respondents who had great confidence on the Assembly dropped from 22% in January to 5% in May. The CEDATOS May poll showed that the Assembly's approval rate descended to 35%.

¶112. (SBU) There is consensus among pollsters that over 60% of Ecuadorians have yet to decide how to vote in the referendum on the new constitution (Confidential Report puts the figure at 67%, Santiago Perez 68%, and CEDATOS 78%). Confidential Report attributed the high percentage of undecided voters to the fact that the constitution did not interest Ecuadorians and that people expected the Assembly to provide tangible improvements in their lives. Santiago Perez stated that most people were not focused on the constitutional process and that there was no constitution to be judged.

¶113. (SBU) President Correa put a positive spin on the polling data during his May 24 radio address, noting that without even knowing the contents of the new constitution, 47% of Ecuadorians were willing to approve it. According to Correa, the diminished confidence in the Assembly is the product of the press campaign to undermine it.

#### COMMENT

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¶114. (C) After six months, public opinion is negative due largely to the Assembly's lack of accomplishments. No doubt

some of the topics being discussed in the Assembly, such as abortion, are highly controversial but important to society and hence are doomed to generate discontent among some groups. Correa's criticism of the Assembly may help to distance him from the incompetence with which the Assembly is associated. However, Correa's promised change agenda has always been anchored to enacting a new constitution. Failure to produce a constitution that wins popular approval is not a viable option for him. Given the tight deadline and difficult issues that lie ahead, we are likely to see PAIS impose constitutional texts with even less input from the other parties.

Jewell